

## REMARKS

### The Invention

The invention provides a prefabricated house having two or more modules, each module having a frame, said frame having a plurality of studs. The module frames having one or more multiframe openings that may be converted to doors, windows, or other openings. Thus, the individual modules are structured to be joined at the multi-frame openings in more than one configuration. For example, if each module was rectangular and included a multi-frame opening at the middle point of each wall, the modules could be joined along adjacent longitudinal walls, thereby forming, generally, a square-shaped layout, or the modules could be joined with a longitudinal wall coupled to a lateral wall, thereby forming, generally, a T-shaped layout.

The multi-frame openings are disposed at set distances regardless of the shape of the module. Thus, modules of different shapes may be joined as the multi-frame openings will be spaced properly. Additionally, there may be more than one opening between modules. For example, two rectangular modules, each having a plurality of multi-frame openings along the longitudinal wall, may be joined by doors at each end of the joined longitudinal wall.

The multi-frame openings are created as part of the frame during the construction of the module. The multi-frame openings may then be covered, for example, by dry wall. During construction of the house, the covering is removed at each multi-frame opening where modules need to be joined. Alternatively, if the layout of the house is known, the multi-frame openings may be converted to the proper type of aperture, that is, doors, windows, and such, during construction of the module. However, if, during construction of the house, the customer desires a new window or door, a multi-frame opening may also be converted to an aperture at the construction site. Because each type of module is manufactured in an identical manner, regardless of where the apertures will be disposed, manufacturing costs are reduced. However, because each type of module includes a plurality of multi-frame openings, each module is still adaptable to the layout chosen by the customer.

Each multi-frame opening is constructed from two studs, which are part of a frame having a plurality of studs, and have a plurality of medial cross-members. Depending upon the purpose of the opening, different medial cross-members may be removed. For example, for a door, all but the uppermost medial cross-members would be removed, whereas for a window, only those medial cross-members between waist high and uppermost medial cross-members would be typically removed.

Status of the Claims

Claims 1, 2, and 4-19 are pending in the application.

Claims 1,2, and 17-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* (U.S. Patent No. 3,720,022) in view of *Donahue* (U.S. Patent No. 2,644,203).

Claims 5-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* and *Donahue* in view of *Derman* (U.S. Patent No. 2,070,924) (“*Derman* ‘924”).

Claims 7-13, 16, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* and *Donahue* in view of *Prigmore et al.* (U.S. Patent No. 4,779,514) (“*Prigmore et al.* ‘514”).

Claims 14-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* and *Donahue* in view of *Prigmore et al.* ‘514 as applied to Claims 12 and 13 and further in view of *Derman* ‘924.

Claims 1,2, and 17-18; Rejected under 35 U.S.C. § 103(a)

Claims 1, 2, and 17-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* (U.S. Patent No. 3,720,022) in view of *Donahue* (U.S. Patent No. 2,644,203).

Initially, it is noted that this application is directed to the construction of homes, and more specifically, prefabricated homes. Thus, the terminology and the meaning of the words used in the claims must encompass the meaning that a builder of homes would apply to those words. For example, Robert Delorenzo, a party with no interest in this

application and whose Affidavit has been previously submitted, is a home builder with over 20 years of experience. As set forth in the Affidavit of Robert Delorenzo (copy submitted with the Response filed October 5, 2006 and attached as Evidence Appendix, Exhibit A) (“Delorenzo Affidavit”), a frame having “studs” includes a top plate, a bottom plate, and a plurality of studs (vertical members). Such “studs” are typically placed either 16 inches or 24 inches apart. Conversely, a “post” is a load-bearing vertical member, typically located at the corner of a wall. Unlike “studs,” which are located relatively close to each other, additional “posts” are typically spaced more than two feet apart from a corner post. These definitions comport with other sources that are directed to those skilled in the art of home construction. *See*, Guertin and Arnold, *Fine Homebuilding*, “Anatomy of a Stud-Framed Wall,” at <http://www.taunton.com/finehomebuilding/pages/h00023.asp.>, (Evidence Appendix, Exhibit B), *Ask This Old House*, Stud Spacing, <http://www.thisoldhouse.com> (Evidence Appendix, Exhibit C), Ching, Building Construction Illustrated (3<sup>rd</sup> Ed.), 2001, page 5.03, (Evidence Appendix, Exhibit D), and, The BOCA National Building Code, 1999, (stating that, “Studs in nonloadbearing walls and partitions shall not be spaced more than 48 inches....”) (Evidence Appendix, Exhibit E).

It is further noted that, while the claims must be given their broadest reasonable interpretation, such an interpretation must be reasonable, “in light of the specification as it would be interpreted by *one of ordinary skill in the art.*” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827 (Fed. Cir. 2004) (emphasis added). Further, as noted at MPEP §2111, “the rules of the PTO require that application claims must ‘conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description’” (quoting the Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) and 37 CFR 1.75(d)(1)).

Reference to “one skilled in the art” when determining the broadest reasonable interpretation is notable, as general usage dictionaries do not always provide the definition used by skilled persons. That is, as set forth in *Irdeco Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300, 72 USPQ2d 1678 (Fed. Cir. 2004), “where evidence such as expert testimony or technical dictionaries demonstrates that artisans would attach a special meaning to a claim term … ‘general-usage dictionaries are rendered irrelevant with respect to that term ....’” (citing *Vanderlande Indus. Nederland BV v. Int'l Trade Comm'n*, 366 F.3d 1311 (Fed. Cir 2004)). This holding comports with the holding in *Dow Chemical Co. v. Sumitomo Chemical Co., LTD*, 257 F.3d 1364, 1372 (Fed. Cir 2001), which stated that, “[w]e have previously cautioned against the use of non-scientific dictionaries, ‘lest dictionary definitions be converted into technical terms of art having legal, not linguistic significance.’” (Citing *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478, 45 USPQ2d 1429, 1433 (Fed. Cir. 1998).

Thus, in this application, Applicant has produced expert testimony and technical manuals discussing the difference between a “stud” and a “post.” That is, “posts” are the vertical members disposed at the corners of frames and “studs” are the vertical members disposed between the posts and which are spaced about 16 inches or 24 inches apart. As such, a general dictionary definition, such as a definition found in the Random House College Dictionary, has been “rendered irrelevant with respect to that term.” Further, this distinction is noted in the attached definition of the word “post” from the dictionary Encarta (Evidence Appendix, Exhibit F). That is, Encarta notes a general definition of a “post” as “upright pole: a pole of wood or metal fixed in the ground in an upright position, serving as a support, marker, or place for attaching things.” This definition is generally consistent with the definition provided by the Examiner. However, Encarta further notes that in the field of “construction” the word “post” has a more specific definition, “construction upright frame part: a vertical piece in a building frame that supports a beam.” The latter definition, *i.e.*, the one relating to construction, just as the present application relates to construction, is consistent with the definition provided by Robert Delorenzo.

*Dattner* discloses a “building construction in which a basic unit of twelve elements is fabricated into a rectangular parallelepiped to define a structurally rigid module requiring no additional structural members.” That is, the module is defined by only four lower horizontal members, four vertical members, and four upper horizontal members – and no additional structural members. It is noted that each of the four vertical members is located at a corner. That is, no vertical member in a module is disposed generally between two other vertical members. Thus, *Dattner* discloses a “cuboid volume” structure similar to the structure in U.S. Patent No. 6,959,515. As noted in the Delorenzo Affidavit, “[b]ecause the vertical members of the chassis are load-bearing members, the vertical members would be identified as “posts” by those skilled in the art. Further, because the patent does not disclose additional vertical supports, whether load-bearing or not, between the corner posts, this patent fails to disclose any “studs” as that word is understood in the art.” It is further noted that, as shown in Figure 2, the modules are “room sized” although no specific dimensions are stated. Therefore, it can reasonably be assumed that the corners, and therefore the vertical members, in each module are more than 16 inches or 24 inches apart. As such, and in view of the definitions provided above, each of the vertical members disclosed in *Dattner* is a “post” and not a “stud.”

*Donahue* discloses a modular add-on bathroom for “a building, such as a rural residence, not previously having a bathroom.” Col. 1, lines 4-5. That is, the modular room is structured to be attached to a preexisting home and, more specifically, to a home having traditional construction. The modular portion defines a room having a floor, three complete walls, one partial wall, a ceiling/roof and various bathroom fixtures with connective hardware. The three complete walls define the outer walls of the modular addition. The partial wall consisted of an inner sheet disposed over a plurality of studs having a head plate and a shoe plate (top and bottom horizontal members) and may include intermediate horizontal brace members. Col. 5, lines 15-25. The partial wall included an opening and a door disposed therein and coupled to the partial wall. The side of the module with the partial wall was attached to the house. The outer walls include a frame having a plurality of studs with a header plate and a sole plate

sandwiched between an inner panel and an outer panel. The outer panels could include a feature such as a window. Thus, *Donahue* discloses a modular unit having one predefined opening, the door, and possibly a predefined window. “Predefined” meaning having to be located in a single location within the panel.

Applicant disagrees with the Examiner that either *Dattner* or *Donahue* discloses a structure having two, or more, modules wherein each module has a multiframe opening and wherein each multiframe opening incorporates two studs from the frame plurality of studs and having a plurality of medial cross-members. *Dattner*, as noted above, does not disclose “studs” as that word is used in the present application and as would be understood by those skilled in the art. Further, as *Dattner* fails to disclose any studs, it is impossible for *Dattner* to disclose “a plurality of medial cross-members” between the studs. Thus, as *Dattner* fails to disclose any studs and “a plurality of medial cross-members” between studs, it is impossible for *Dattner* to disclose a “multiframe opening” as a “multiframe opening” is defined in this application.

*Donahue*, while disclosing studs, fails to disclose a “plurality of medial cross-members” disposed between two such studs. *Donahue* does disclose the occasional single horizontal member, “for example, brace members serving as a means to mount an outlet ...,” however, such a traditional use of a brace is not the same as a “multiframe opening” as defined in this application. Further, the *Donahue* device is structured to be coupled to a traditional house, *e.g.* a rural home not having a bathroom. As such, it is impossible for *Donahue* to disclose “two or more modules” as a traditional rural home is not a “module.”

Accordingly, the cited art discloses one multi-modular construct limited to 12 structural members per module, but wherein none of the structural members are studs or a plurality of medial cross-members between studs, and, a single modular construct having studs but not a second module nor a plurality of medial cross-members between studs.

Initially, as neither reference discloses a plurality of medial cross-members between studs, no combination of these references can teach or suggest the invention recited in Claim 1 of the present application. As such, Claim 1 and all claims depended

therefrom should be allowable. Further, as discussed below, these two references cannot be combined as suggested without destroying the primary reference, *Dattner*.

With regard to the determination of obviousness under 35 U.S.C. § 103, the Supreme Court has recently stated that:

Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, *it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.* This is so because inventions in most, if not all, instances rely on building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

*KSR International Co. v. Teleflex Inc.*, \_\_\_\_ U.S. \_\_\_, \_\_\_, 2007 WL 1237837 (2007), (Slip Opinion at 14-15) (emphasis added). In addition, the Supreme Court also noted that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit.* See *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, *there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness*”).

*Id.*, at \_\_\_\_ (Slip Opinion at 14) (emphasis added). It is noted that the Supreme Court included an extended discussion reciting the nature of the inventions disclosed in the prior art and then several paragraphs identifying the rationale and reasons that the cited art could be combined and why one skilled in the art would make such a combination. *Id.*, at \_\_\_\_ (Slip Opinion at 3-6, 20-22).

It is further noted that the requirement for an “articulated reasoning” is not a minor point in *KSR Int’l* that an Examiner may simply ignore. It is noted that the requirement for an “articulated reasoning,” or a similar statement, is set forth in no less

than three MPEP sections relating to obviousness rejections. *See* MPEP §§ 2141, 2142, and 2143. More specifically, MPEP § 2141 states, “Office personnel **must** therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include **explicit findings** as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. **Factual findings** made by Office personnel **are the necessary** underpinnings to establish obviousness.” (Emphasis added). MPEP § 2142 notes that, “[t]he Federal Circuit has stated that ‘**rejections on obviousness cannot be sustained with mere conclusory statements**; instead, there must be some **articulated reasoning** with some rational underpinning to support the legal conclusion of obviousness.’ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).” (Emphasis added). MPEP § 2143 states, “The **key** to supporting any rejection under 35 U.S.C. 103 is the **clear articulation** of the reason(s) why the claimed invention would have been obvious.” (Emphasis added).

With regard to combining known elements of an invention, the Supreme Court further stated that, “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.*, at \_\_\_\_ (Slip Opinion at 14). This holding comports with *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) which held that, although some of the cited references, individually, may have some of the claimed inventions’ features, “one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention.” *Id.* at 1075. Instead, to reach the proper conclusion under §103:

The decision maker must step backward in time and into the shoes worn by [a person having ordinary skill in the art] when the invention was unknown and just before it was made. In light of *all* the evidence, the decision maker must then determine whether...the claimed invention as a whole would have been obvious at *that* time to *that* person.

*Id.* at 1073-74. (emphasis added).

The Examiner has not properly supported the rejection under 35 U.S.C. § 103(a) and under *KSR International*. In the Office Action, the Examiner has merely identified a list of elements recited in the present application and located various references wherein similar elements are disclosed. The Examiner has not “made explicit” the reason such references would, or could, be combined as suggested. That is on pages 3-4 of the June 24, 2008 Office Action, the Examiner recites a number of elements (allegedly, see above) disclosed in the two references. The Examiner then states, “In view of the above, it would have been obvious to include the modules including studs and the modules including one or more multi-frame openings incorporating studs from the plurality of studs in order to reinforce and strengthen the modules.” This single sentence is the only explanation for the proposed combination.

Applicant asserts that the single sentence is the exact type of conclusory sentence that *KSR International* and MPEP § 2142 state cannot, by itself, support a rejection under 35 U.S.C. § 103(a). By providing only a single sentence, the Examiner has failed to provide explicit findings (MPEP § 2141) and failed to provide the “key” support for a finding of obviousness (MPEP § 2143). Accordingly, this rejection is improper and the rejection of Claims 1, 2, and 17-18 under 35 U.S.C. § 103(a) should be withdrawn.

Moreover, in this instance the cited art actually teaches away from each other. *See* MPEP §§ 2141.02, 2143.01 (V), (VI) and 2146 (D)(2). As set forth in MPEP §§ 2141.02, a “prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).” Further, “If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).” *See*, MPEP 2143.01(V). Finally, “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not

sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).” See, MPEP 2143.01(VI).

That is, with respect to the rule set forth in MPEP § 2143.01 (VI), the “principle of operation” for the *Dattner* device is that the modules are “parallelepipeds” constructed of “12 individual elements … **completely eliminating the need for additional structural members.**” Col. 1, lines 25-36 (emphasis added). That is, the purpose of the *Dattner* device is to provide a frame assembly **without** the need for studs or other internal braces. The proposed combination would incorporate the studs of *Donahue* as well as a plurality of medial cross-members between studs (not disclosed by any cited art). By incorporating such “additional structural members,” the “intended purpose” of *Dattner*, *i.e.* providing a frame assembly **without** the need for studs or other internal braces, is destroyed. That is, *Dattner* when combined with *Donahue* would be “unsatisfactory for its intended purpose.”

Accordingly, the proposed combination is not permitted and the rejection of Claims 1, 2, and 17-18 under 35 U.S.C. § 103(a) should be withdrawn.

Claims 5-6; Rejected under 35 U.S.C. § 103(a)

Claims 5-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* and *Donahue* in view of *Derman* (U.S. Patent No. 2,070,924) (“*Derman* ‘924”). The deficiencies of *Dattner* and *Donahue*, and the reasons they cannot be combined, are noted above. *Derman* discloses a wardrobe or cabinet. There are at least three problems with the use of *Derman* as prior art: (1) *Derman* is non-analogous art; (2) the *Derman* reference fails to disclose the elements cited by the Examiner; and (3) the rejection is not properly supported.

With regard to the first point, Applicant refers to MPEP §2141.01 which cites *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In *Oetiker*, the Applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly “hook” which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a

reference which disclosed a hook-and-eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of Applicant's endeavor and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments.

With regard to point (1), this application relates to prefabricated houses. *Derman* discloses a wardrobe or cabinet. Just as a garment hook is not related to a hose clamp, a wardrobe is not related to a prefabricated house. That is, the Examiner has not demonstrated why one skilled in the art of building prefabricated houses would turn to a reference disclosing a wardrobe to create an improved modular home. As such, the *Derman* reference is non-analogous art.

With regard to the second point, the Examiner states that *Derman* discloses "a cuboid volume with cross members 35/27 and studs 22/19." June 24, 2008, Office Action at p 4. *Derman* discloses a wardrobe or cabinet. As set forth above, to those skilled in the art, a "stud" is a wall frame element typically spaced about 16 inches or 24 inches apart and below a covering. *Derman* does not disclose any type of wall frame elements including "stud."

With regard to the third point, the entire rejection of Claims 5-6 is set forth in five sentences. Sentence one recites that the rejection exists; sentence two notes that *Dattner* fails to disclose cross members removably coupled to studs; sentence three notes that *Derman* discloses cross members removably coupled to studs (a point the Applicant does not accept, see above); and finally sentence five reads, "It would have been obvious to one of ordinary skill in the art to removably couple the studs to the cross members to allow for a greater degree in variation of size of the room modules as shown by *Derman*." The final sentence is the only explanation for the proposed combination.

Applicant asserts that the single sentence is the exact type of conclusory sentence that *KSR International* and MPEP § 2142 state cannot, by itself, support a rejection under 35 U.S.C. § 103(a). By providing only a single sentence, the Examiner has failed to

provide explicit findings (MPEP § 2141) and failed to provide the “key” support for a finding of obviousness (MPEP § 2143).

Accordingly, this rejection is improper and the rejection of Claims 5 and 6 under 35 U.S.C. § 103(a) should be withdrawn.

Claims 7-13, 16, and 19; Rejected under 35 U.S.C. § 103(a)

Claims 7-13, 16, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* and *Donahue* in view of *Prigmore et al.* (U.S. Patent No. 4,779,514) (“*Prigmore et al.* ‘514’). The deficiencies of *Dattner* and *Donahue*, and the reasons they cannot be combined, are noted above. *Prigmore* discloses a building constructed of pre-made panels that are coupled together by hinges. There are at least two problems with the use of *Dattner* in view of *Prigmore* as combined prior art: (1) *Prigmore* fails to disclose the elements cited by the Examiner; and (2) the rejection is not properly supported.

Each side panel of *Prigmore* is disclosed as being pivotally coupled to the roof structure by a hinge element and coupled to a floor element by a plurality of latches. Such a configuration allows the structure to be moved in a collapsed form. The Examiner states that *Prigmore* discloses both “passive space” and “fixed space.” Applicant disagrees. These phrases are defined phrases in the present application. See generally, page 8, lines 19-31. That is, the specification states:

Fixed space is rigid and does not include foldable panels 18. Fixed space is typically any space that has functionality beyond providing volume. For example, the following would qualify as fixed space: closets, bathrooms, kitchens, storages, laundry rooms or house mechanical space, as well as corridors and stairs. Conversely, passive space is compressible space, *i.e.*, that which may be folded. Typically, the passive space is not laden with fixtures, etc.

*Id.*

With regard to the first point noted above, the “fixed space” of *Prigmore* identified by the Examiner is an empty roof area. That is, *Prigmore* does not disclose a “functionality beyond providing volume.” Thus, although not shown as being collapsible

in *Prigmore*, such a space is still a “space … which may be folded.” Any generally empty space, such as a hollow roof, could be folded; the mere fact that *Prigmore* fails to disclose such a collapsible structure does not change that nature of the space. Additionally, the present application states that the “core modules” have both fixed and passive space. A “core module” is an “indoor room” (page 8, line 13) and not an “outdoor structure” (page 8, lines 17-18). A roof, such as the *Prigmore* roof, is not an “indoor room” and is an “outdoor structure.”

With regard to the second point noted above, the Examiner has, again, merely recited a list of elements the Examiner contends are disclosed by the references, then states that because the elements were known individually, it would be obvious to combine them. Applicant asserts that the single conclusory sentence is the exact type of sentence that *KSR International* and MPEP § 2142 state cannot, by itself, support a rejection under 35 U.S.C. § 103(a). By providing only a single sentence, the Examiner has failed to provide explicit findings (MPEP § 2141) and failed to provide the “key” support for a finding of obviousness (MPEP § 2143).

Accordingly, this rejection is improper and the rejection of Claims 7-13, 16, and 19 under 35 U.S.C. § 103(a) should be withdrawn.

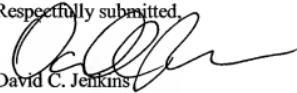
Claims 14-15; Rejected under 35 U.S.C. § 103(a)

Claims 14-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dattner* and *Donahue* in view of *Prigmore* as applied to claims 12 and 13 and further in view of *Derman*. The limitations of each reference are detailed above. Further, the Examiner has again failed to provide an “articulated reasoning with some rational underpinnings” sufficient to establish a *prima facie* case of obviousness. Accordingly, the rejection of Claims 14 and 15 is improper and should be withdrawn.

CONCLUSION

In view of the remarks above, Applicant respectfully submits that the application is in proper form for issuance of a Notice of Allowance and such action is requested at an early date.

Respectfully submitted,



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## **EVIDENCE APPENDIX**

Exhibit A – Affidavit of Robert Delorenzo, submitted on October 5, 2006, in response to the Office Action of May 5, 2006.

Exhibit B - Guertin and Arnold, *Fine Homebuilding*, “Anatomy of a Stud-Framed Wall,” at <http://www.taunton.com/finehomebuilding/pages/h00023.asp>, submitted on August 21, 2007, in response to the Office Action of May 24, 2007.

Exhibit C - *Ask This Old House*, Stud Spacing, <http://www.thisoldhouse.com>, submitted on August 21, 2007, in response to the Office Action of May 24, 2007.

Exhibit D - *Ching, Building Construction Illustrated* (3<sup>rd</sup> Ed.), 2001, page 5.03, submitted on August 21, 2007, in response to the Office Action of May 24, 2007.

Exhibit E - *The BOCA National Building Code*, 1999, (stating that, “Studs in nonloadbearing walls and partitions shall not be spaced more than 48 inches....”), submitted on August 21, 2007, in response to the Office Action of May 24, 2007.

Exhibit F - Definition of “post” submitted on February 18, 2008, in response to the Final Office Action of November 28, 2007.